

Requirements for Evaluation of PURPA Standards Enacted
by the Energy Policy Act of 2005

Docket 06-999-03

I. Time-Limitations for Evaluation of 16 U.S.C. § 2621(d) Standards 11 - 15

Energy Policy Act of 2005 PURPA Deadlines*¹

16 U.S.C. § 2621(d) Standards	August 8, 2006	August 8, 2007	August 8, 2008
11. Net Metering		C	D
12. Fuel Sources		C	D
13 Fossil Fuel Generation Efficiency		C	D
14. Time-Based Metering and Communications**	C	D**	
15. Interconnection	C	D	

C = Consideration, i.e., begin consideration of the standard (i.e., open a docket) or set a hearing date for the consideration.

D = Determination, i.e., complete consideration and make a determination on whether or not to adopt the additional standards.

* = If a state commission fails to comply with the specified dates for consideration and determination then the state commission must undertake the consideration and determination in the first rate proceeding commenced after the date three years after August 8, 2005².

** = 1) The Time-Based Metering and Communications standard itself specifies that each electric utility shall offer each of its customer classes a time-based rate schedule by February 8, 2007, which is before the deadline for making a determination for this standard. If the standard were adopted exactly as drafted, utilities would be required to implement certain provisions before the end of the two-year decision making period of the regulatory authority. PURPA, itself, however, provides state commissions the ability to alter time periods within the standard to accommodate their schedules – see below Section II.A. - Requirement to Consider, Make a Determination and Implement.

2) If no comparable state action exists for this standard, PURPA requires each state commission to conduct an investigation and issue a decision by February 8, 2007, as to whether or not it is appropriate for electric utilities to provide and install time-based meters and communications for each of their customers enabling such customers to participate in time-based pricing rate schedules and other demand response programs.

II. Procedural and Other Requirements for Evaluation of PURPA Standards 11 - 15

A. Requirement to Consider, Make a Determination, and Implement

While state commissions are required to consider the new PURPA standards in light of the goals to encourage conservation of energy supplied by electric utilities, optimization of the

¹16 U.S.C. § 2622(b)(3), (4), and (5)

²16 U.S.C. §2622©

efficient use of facilities and resources by utilities, and equitable rates to electric customers, state commissions are not required to adopt the standards³. PURPA specifies that the state commissions may implement any standard, decline to implement any standard, or adopt different or modified standards from those described in the statute. However, if a state commission declines to implement any standard, it is required to state in writing the reason for its decision and make that statement available to the public⁴.

For the purposes of this evaluation, PURPA contains special rules applying to time-based metering and communications. 16 U.S.C. §2625(b) provides guidance on cost effectiveness and 16 U.S.C. §2625(I) requires that in making its determination each state commission must conduct an investigation and issue a decision, by February 8, 2007, as to whether or not it is appropriate for electric utilities to provide and install time-based meters and communications for each of their customers enabling them to participate in time-based pricing rate schedules and other demand response programs.

B. Procedural Requirements for Consideration and Determination

PURPA specifies the procedural requirements for consideration and determination that state commissions are to follow. The consideration shall be made after public notice and hearing and the determination shall be in writing, based upon findings included in such determination and upon the evidence presented at the hearing, and available to the public⁵.

C. Applicability

PURPA specifies that Title 1 applies to each utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electricity energy by such utility for purposes other than resale exceeds 500 million kilowatt-hours during any calendar year. PURPA also exempts operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for the purposes of resale. The baseline year for calculation, as specified in the PURPA Conference Committee Report, is two years before the year in question, i.e., two years before the year when the standards are being considered.

D. Authority to Intervene, Participate, Access to Information, and Compensation for Costs of Participation and Intervention

PURPA provides for the intervention and participation of the Secretary of Energy, any affected electric utility, or any electric consumer as a matter of right in the proceedings for the Standards specified in 16 U.S.C. §2621⁶. Any intervener or participant in the proceedings shall have access to information available to other parties in the proceeding if the information is relevant to the issues to which his/her intervention or participation relates. In addition, under

³16 U.S.C. § 2621(a) and (c)(1)(B)

⁴16 U.S.C. § 2621(c)(2)

⁵16 U.S.C. §2621(b)

⁶PURPA Title 1 Subtitle C § 121 and 122

certain circumstances PURPA provides for compensation costs of participation or intervention in the process if a consumer substantially contributed to the approval, in whole or in part, of a position advocated by the consumer.

E. Prior State Actions and Prior and Pending Proceedings

Prior state actions addressing net metering, fuel sources, fossil fuel generation efficiency and interconnection are grandfathered and no further consideration of the standards is required if the state has already implemented the standard or a comparable standard, the state commission has conducted a proceeding considering implementation of the standard or comparable standard, or the state's legislature voted on implementation of the standard or comparable standard⁷. For the time-based metering and communications standard, the prior state action by the state commission must have been conducted in a proceeding considering implementation of the standard or comparable standard within the previous three years before August 8, 2005, or the state's legislature voted on implementation of the standards or comparable standard also within the previous three years before August 8, 2005.

Proceedings commenced by state commissions before August 8, 2005, and actions taken before August 8, 2005, in these proceedings shall be treated as complying with the PURPA requirements if the proceedings and actions substantially conform to the requirements. Any proceedings commenced but not completed before August 8, 2005, must comply with the PURPA requirements to the maximum extent practicable, with respect to so much of the proceeding or actions as takes place except as provided in 16 U.S.C. §2631 regarding intervention in proceedings.

F. Additional Information and Guidance

The enrolled version of The Energy Policy Act of 2005, Subtitle E--Amendments to PURPA can be found at: <http://thomas.loc.gov/cgi-bin/query/F?c109:5:./temp/~c109KxvHsz:e1192184>:

Additional information and guidance on implementing the new PURPA standards enacted by the Energy Policy Act of 2005, including applicable sections of PURPA in legislative format, can be found in the ***Reference Manual and Procedures for Implementation of the "PURPA Standards" in the Energy Policy Act of 2005*** prepared by Ken Rose and Karl Meeusen and sponsored by the American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissions, and the National Rural Electric Cooperative Association (see http://www.naruc.org/associations/1773/files/PURPA_Manual_webversion.pdf).

⁷PURPA Title 1 Subtitle A § 112(d) and Subtitle C § 121©, and 124